

24 JUN 1969

Mr. James M. Frey  
Office of Assistant Director  
for Legislative Reference  
Bureau of the Budget  
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to your request of 12 June 1969 for views of this Agency on the Department of Justice draft bill "To amend Title 28 of the United States Code to provide for the defense of suits against Federal employees and for other purposes."

This Agency is in favor of making comprehensive the exclusive remedy provision of the Federal Tort Claims Act as proposed in section 1 of the draft bill.

Pursuant to section 3 of the draft bill a case may be remanded to the state court, without intervening appeal, if the United States district court finds that the act or omission giving rise to the suit was not within the scope of employment. We believe this critical determination should be subject to appellate review and to that end recommend the following addition as the last sentence of section 3:

"Notwithstanding the limitations in Title 28, U.S.C. § 1447(d), the question of whether an employee was acting within the scope of his office or employment may be reviewed on appeal in accordance with Rule 3, Federal Rules of Appellate Procedure."

We appreciate this opportunity to comment on the proposed bill.

Sincerely,

[Redacted Signature]

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John M. Maury  
Legislative Counsel

OLC/LJM:rw (23 June 69)

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S/ John S. Warner

24 JUN 1969

Deputy General  
Counsel